

CITY COUNCIL OVERSIGHT COMMITTEE MINUTES

March 14, 2019

The City Council Oversight Committee of the City of Norman, Cleveland County, State of Oklahoma, met at 4:05 p.m. in the City Council Conference Room on the 14th day of March, 2019, and notice and agenda of the meeting were posted in the Municipal Building at 201 West Gray 48 hours prior to the beginning of the meeting.

PRESENT:	Councilmember Holman and Chairman Clark
ABSENT:	Councilmembers Carter, Castleberry, and Hickman
OTHER STAFF PRESENT:	Mayor Lynne Miller Ms. Sara Kaplan, Retail Marketing Coordinator Ms. Beth Muckala, Assistant City Attorney Ms. Mary Rupp, Interim City Manager Ms. Kathryn Walker, Interim Assistant City Attorney Ms. Regina Oliphant, Administrative Tech. IV

Item 1, being:

CONTINUED DISCUSSION REGARDING A POSSIBLE FEE FOR SINGLE USE BAGS

Ms. Beth Muckala, Assistant City Attorney, highlighted her Power Point Presentation regarding the Single-Use Bag Ordinance lastly discussed at the December Oversight Meeting, and during that meeting staff presented a draft ordinance for the committee's consideration and staff received some feedback from the committee, which they have included in the current draft. She said the committee preferred a fee to a ban, and instead of applying to food stores as seen in other cities; they applied the changes to all retail stores leading to a new definition in the current draft. She said the committee also favored some limited use of exceptions and exemptions discussed in the previous meeting; however, those changes are applicable to all businesses and lead to a cut back on exceptions, but the recipients of certain assistance programs, e.g., food assistance programs, would be exempted. She said there was also a mention during the last meeting of those who are sales tax exempt should also be included in that category. She said there is another minor change to the ordinance and copies of those changes will be available in the handout and available in the back up material as well.

Chairman Clark asked are the sales tax exemptions for organizations, e.g., PTA or 501c3, standard in other cities with the Single-Use Bags Ordinances. Ms. Muckala said she has not seen that in other cities' ordinances but suggested by another councilmember during the last meeting and she believed the basis was on such as; veterans with sales tax exempt status. She said the language considered is very vague and the language needs flushed out further. She said it was a comment received and they found a place in the ordinance where it could be included.

Ms. Muckala said certain uses exempted under the current draft that seemed acceptable to the Committee, e.g., small paper bags used for prescription medication, laundry, bulk items and bags used to contain moisture issues, i.e., food take-out. She said the suggested five-cent fee; split with the retail stores, with the municipal portion at three cents, seemed acceptable for the complimentary municipal programming, and regarding the municipal use of fees, there were two additions recommended and listed as follows:

- Explore repurposing plastic bags for re-use
- Greenhouse Grants: multi-family housing recycling enclosures, etc.

Item 1, continued:

Ms. Muckala said the re-use of the plastic bags is specifically as a separate use, or it could also be included under the original inclusion of “Fund programs and infrastructure that allow the City of Norman to reduce waste associated with Single-Use bags,” and used as a catchall. She said that once they have feedback and more facts about how they want to implement the programs, they might consider if they want to separate them out, but for now thinks what has been discussed is contained within the catchalls. She said there was also a mention regarding Green Home Grants, e.g., multi-family housing and providing them the ability to provide recycling enclosures.

Ms. Muckala said since the last meeting, Senate Bill 1001 introduced and proceeded past the State Senate, and Senate Bill 1001 is very similar to what they have seen before and it says, “No political subdivision shall restrict, tax, prohibit or regulate the use, disposition or sale of auxiliary containers...” Chairman Clark added it is more expansive than the last bill 1465, unfortunately. Ms. Muckala said yes, and its definition of auxiliary containers is even broader than our definition of the single-use bags and other items contained within our draft ordinance. Chairman Clark said those supporting Senate Bill 1001 are also handing out flyers to elected officials; making it look like the City is adding fees on solo cups and milk gallons and this is completely misrepresenting what the City of Norman is trying to do; finding it particularly insulting. Ms. Muckala said the City’s definition could not interpret that way and have actually defined them as single-use bags, which could read paper or plastic but definitely not containers considered as solo cups or gallon containers for milk.

Ms. Muckala said it also listed that, “County or municipal ordinances or agreements can address recycling programs or the disposal of solid waste” are allowed. Chairman Clark said it is also worth pointing out that not a single company in the State of Oklahoma recycles plastic bags anymore and does not actually know what they meant by that statement.

Ms. Muckala said also listed, included in the last proposal and added back in by the Senate Committee, but “the use of auxiliary containers on property owned by a county or municipality” is subject to whatever regulations the municipality finds proper. Chairman Clark asked does staff know of any municipal complex that hands out plastic bags. Ms. Muckala said she is not aware of any.

Ms. Muckala said that is the way current Senate Bill 1001 reads and there is some evaluation of potential pre-emption and not sure how that might change the conversation, but during previous discussions regarding single-use bags the next steps discussed were obtaining input from the public and businesses. There have been some minor changes roughed into the single-use fee ordinance, but now they have Senate Bill 1001 and if that prompts discussion, regarding voluntary programs or another mechanism they might want to explore. Chairman Clark said they might have to as many entities have come out in support of the pre-emption bill including the Oklahoma Retail Merchants Association. She said she had a very entertaining conversation with their CEO and it ended with enjoyable as I find this dialog... and no, I honestly do not see what Senate Bill 1001 passage has to do with another bill except that you want the power to pass what you wish on the city level. She said yes, she does want the power to address local issues at the local level and they are not the only ones. Apparently, the State Chamber has supported them and certain retail organizations, e.g., Love’s and Quik Trip, which she does not believe there are any Quik Trip locations in Norman and ironic they are trying to pre-empt our ability to do this. She said she received some good news today that the Tulsa Young Professionals have voted to stand against Senate Bill 1001 because apparently they have an eye for the future and care about local control. She has already reached out to Norman Next and they are interested in the same and this will take a lot of work; however, again, she just wants the ability to have this conversation and is very happy for the work done for the City of Norman. The Green Grants are wonderful and allows expansion of recycling. She said she has received some push back on this from residents whom have sworn to shop in Moore if Norman is successful in the passing of single-use fee, but only three residents as the rest of the residents have vastly been in support of the ordinance.

Item 1, continued:

Chairman Clark said what the City is trying to do is not novel in any way and done all the country and all over the world. She is hoping they can continue to get additional feedback from residents and get this passed. Her question would be if passed, with the Senate Bill 1001 emergency clause ironically; but if passed, what kind of legal battle might arise. Ms. Muckala said that once it goes into effect, it would be a question of whether we are in conflict with the State Law and if there were conflict, you would only have precedence on matters that are purely of municipal concern. She said there would be an evaluation on that level but simply having it in place before the State Law does not avoid pre-emption. Chairman Clark asked what happens when it goes into effect and the City wants to keep our law, would the City have to go to court over it. Ms. Muckala said there would be a legal challenge. Chairman Clark asked staff if they were prepared to handle that. Ms. Muckala said they are always prepared to handle legal challenges.

Chairman Clark asked has the City ever had to fight a pre-emption battle. Ms. Kathryn Walker, Interim City Attorney, said they have had arguments regarding other city ordinances. Mayor Miller asked did not the oil companies try to argue our floodplain ordinance drafted by the City to protect the streambed corridors; also protecting the water and at the time that kept some of the companies from drilling. Ms. Kathryn Walker said they did not have any litigation but have seen it argued different ways when presented to legislature and the City is then more pre-empted. More strictly pre-empted. They have also had other challenges to other ordinances filed in District Court and currently in the process of dealing with one now. She said the typical arguments for pre-emption are is this a law, general equitability, or a matter of true local concern.

Chairman Clark asked when health and safety comes into it. Ms. Walker said that is probably more your local concerns and arguments regarding public health and safety regarding our residents and they get to govern that.

Chairman Clark asked if they would be able to keep our ordinance in place during the battle. Ms. Walker said they have been able to so far, but is not outside the public responsibility where they would object; asking the court to hold off on the ordinance going into effect for 30 days after the adoption, and this has happened where they were given an injunction to deliver the enforcement.

Chairman Clark said the argument made by the Retail Merchants Association is that not having a uniform approach to plastic bags stops us from being in the Top 10 for Business Climate and Investment. She said she is asking them to defeat Senate Bill 1001 and if they want to get uniformity, let us do a uniformity that actually benefits the environment and make it a statewide ordinance.

Councilmember Holman said he agrees and said states are often successful at getting injunctions against the Federal Government, e.g., the current president has made several executive orders that have been stopped by the courts and because states have challenged them. He said he would be interested in challenging the State's use of the emergency clause, and asked if they can prove, this is a matter of statewide concern that they need to pass with use of the clause. He said after six years of being on Council, he objects to the State of Oklahoma interfering with local issues. He said it would be nice if some of the larger cities, e.g., Tulsa, Oklahoma City, Broken Arrow, and other bigger cities would join along with the City of Norman to challenge the State. He said they continue to use emergency clauses to pass multiple bills, year after year, taking away power from local elected officials, and somebody has to do something as this continues to go on. Chairman Clark agreed. She said what she is hearing between Councilmember Holman and herself is that she is prepared to fight this but she is not going to be the one in court. She is very mindful of staff's workload and effort but she thinks Councilmember Holman is right. She thinks it is time they take a stand against the pre-emption and what they are asking to do is not unique. She said the neighbors have done similar but yet unique to their community, and looks forward to receiving additional residential feedback.

Item 1, continued:

Chairman Clark said they should have the right to address this concern, period. She said by laying down a statewide pre-emption, the only answer is to make all other cities do a plastic bag ordinance, and she does not think they should necessarily do that either.

Mayor Miller said she was thinking about the street planning corridors, probably the largest one, primarily to protect the Lake Thunderbird watershed, and additionally, with much time involved and had a lot of push back from the oil companies. She also remembers legal staff telling her that they were pretty sure that they would be challenged and asked if there was ever a case regarding the changes made and in relation to the Lake Thunderbird watershed and the protection against drilling. Ms. Walker said they did not do anything.

Mayor Miller asked does the Council really want to push forward and what amount of time is involved. Chairman Clark said if we have a vision for what we want our community to be, as spelled out in "Ready for 100", we have to take a stand at some point. We are asking to address a local issue at the local level. She is prepared to take a stand on this issue because it is important. If we care about the safety, health and wellness of our drinking water as expressed with our involvement with Stormwater, and the protection of Lake Thunderbird and keeping it clean. Our wildlife is a concern as some discussed about seeing cattle eating plastic bags. She said this is an issue considered right for a battle, if you will, and she has made it a priority. She said she would like to continue receiving public input and very excited to see the Tulsa Young Professionals get on board, and Norman's show of interest; however, not officially yet. This clearly shows there are young people who care and if we want to keep young caring professionals protecting our environment, we might want to be thinking more forward and not pre-empting local people.

Ms. Beth Muckala said the Ordinance is in good shape and comments received at the last meeting are included in the Draft Ordinance; however, they have discussed scheduling a public meeting to get further input from business owners. Chairman Clark said she talked to Mr. Scott Martin, President/CEO, Norman Chamber of Commerce, about putting together a small committee of business owners to address their concerns and approves of the continuance of working with the Chamber of Commerce, as well as, scheduling a public meeting for further input as well.

Mayor Miller said if we approve the drafted ordinance, we should move forward with the public meeting to direct us about how much more energy to invest. Chairman Clark agrees.

Chairman Clark asked for public comments or questions.

Mr. Fightmaster said when you first began talking about this he was under the impression the discussions were regarding plastic bags and now paper bags have been included. Why and how many paper bags were found in Suttan last weekend compared to plastic bags? Chairman Clark said the reason for adding paper bags is that during their research they found that when the community have a free option; it really hurts the businesses by driving costs in one other way. If you want to look at the scientific research of the footprint that the creation of paper bags takes, they have their own downsides. She said we did start with the broadest one, knowing that would be, believe it or not the most business friendly, and technically more environmentally friendly, but very good feedback that they could take out of the public meeting, and if needed to be cut out they could, but the reason they went as broad as they could.

Public comment: Is there a flat fee for plastic and paper or is plastic separate as it is the most problem some. Chairman Clark said the five (5) cent fee applies to both plastic and paper bags; however, if anyone is on federal aid, there will be no fee whatsoever. There will be not fees for reusable bags and technically, someone could reuse a plastic or paper bag they already have to avoid additional fees.

Public Comment: How are they going to go about acquiring the money? Chairman Clark said that will be part of how you calculate sales tax, there will be another fee added to those calculations. She said this is why they wanted the businesses to keep some of the fees for training and administrative costs. She said they have done their very, very, very best with research and input to be mindful of the environmental side but also the business side as well; additionally, she was quite surprised when she had small businesses fully supportive of the fee.

Item submitted for the record

- Memorandum dated March 14, 2019, from Beth Muckala, Assistant City Attorney and Terry Floyd, Development Coordinator, to the Council Oversight Committee with Attachments as follows:
 - Attachment A: Preliminary DRAFT Single-Use Bag Fee Ordinance
 - Attachment B: City-by-City comparison (of cities studied)
 - Attachment C: Potential Revenue
 - Attachment D: Senate Bill 1001
- Power Point Presentation Handout entitled, "City Council Oversight Committee, Single-Use Bag Ordinance dated March 14, 2019"

Item 2, being:

DISCUSSION REGARDING REGULATIONS FOR ESCOOTERS

Item submitted for the record

1. Memorandum dated March 8, 2019, from Beth Muckala, Assistant City Attorney and Terry Floyd, Development Coordinator, to the City Council Oversight Committee with Attachments as follows:
 - Attachment A: Permit Fees and Pricing Schedule, June 2018
 - Attachment B: Small Vehicle Parking in the Right-of-Ways

ADJOURNMENT:

The meeting adjourned at 5:15 p.m.